

In Re: Tennessee Art League, Inc.)
Map 093-05-4, Parcels 045.00) Davidson County
Claim of Exemption)

Nashville, Davidson County. “TAL” is a non-profit organization exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code. Physically, the building has three (3) stories with a total square footage of approximately 8,500 square feet; actual use of the building began in November of 2005 (purchased in August of 2005). The building contains 49 rooms including utility closets and restrooms. As part of the record in this hearing, a sketch was provided that shows where each room is located. The first floor contains three (3) art galleries¹, a storage sorting area and a Gift Shop. The second floor has seven (7) studios, of those five (5) are rented to artist², the remaining two (2) are not currently in use but available for rent [see T.C.A. §67-5-212 (a)(1)(A)]. The third floor is primarily reserved for Office space and has a Library/Conference Room.

Article II, section 28 of the Tennessee Constitution permits the legislature to **exempt** from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, **charitable**, scientific, or nonprofit **educational** institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists... ; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, **charitable**, scientific or **educational** purposes. [Emphasis added.] Tenn. Code Annotated §67-5-212(a)(1) (A).

In this state, property tax exemptions are liberally construed in favor of religious, charitable, and educational institutions. *See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission*, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nonetheless, as the party seeking to change the initial determination on its application for exemption, the “TAL” has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In an analysis of the application, the Designee’s ruling, the accompanying explanation in the appeal application and the testimony of the parties at the hearing³ it appears to the administrative judge that the appellant, “TAL”, has not met the burden to change the initial determination.

The issues cited by the Designee have not, in the opinion of the administrative judge been adequately addressed.

Once, we start with the basic premises that:

It is a fundamental rule that **all property** shall be taxed and bear its **just share** of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it. 2 Cooley on Taxation (4th Ed.) sec. 672; American Bemberg Corp. v. Elizabethton, 180 Tenn. 373, 378, 175 S.W.2d 535; American

¹Paintings are sold to the public with TAL receiving a portion of the profits.

²The rent exceeds the statutory maximum of \$1.00 per year plus reasonable expenses, TCA 67-5-212 (a)(1)(A).

³Mr. Gibbs had until May 11, 2005, to supplement the testimony with late filed exhibits; he failed to supply them to the administrative judge.

Nat. B. & T. Co. of Chatta. v. MacFarland, 209 Tenn. 263, 352 S.W.2d 441, 443, 444. (Emphasis supplied)

"Taxes are the life blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state, and essential to the perpetuity of its institutions; consequently he who claims exemption must justify his claim by the clearest grant of organic or statute law. Knoxville & O. R. Co. v. Harris, 99 Tenn. 684, 693, 43 S.W. 115, (Tenn.App. 1897)

... an applicant for exemption from property taxation has the burden of proving its entitlement to the exemption. City of Nashville v. State Board of Equalization, 360 S.W.2d 458, 461 (Tenn. 1962) Further, as Administrative Judge Pete Loesch observed, **"no particular liberality is necessary or appropriate in the threshold determination of whether such applicant is a religious, charitable, scientific, or education institution under T.C.A. §67-5-212 (a)(1). Christian Psychological Center, Inc., Shelby County, Initial Decision and Order (April 14, 2000) (Emphasis supplied)**

It is encumberent upon the Taxpayer/ Appellant to show that they do fall under the specific exemption statute, T.C.A. § 67-5-223. The administrative judge respectfully disagrees with counsel for "TAL", Mr. Gibbs, and affirms the decision of Mr. Aaron, State Board Designee.

As Administrative Judge Pete Loesch stated in *Tennessee Artist's Guild, Inc. (Madison Art Center)* Davidson County, 2005:

That MAC has been a worthwhile asset to the community seems undeniable. Yet the subject property is surely not exemptible to the extent that it is: (a) used in connection with rental of the MAC building for commercial or social purposes; or (b) not currently used at all (i.e., the idle restaurant equipment). Further, **while advancement of the arts may be a widely shared goal, the promotion of greater sales opportunities and exposure for aspiring professional artists in return for unpaid services cannot legitimately be deemed a charitable pursuit.** The fact that the actual sales of merchandise admittedly encouraged by TAG may not rival those of a for-profit art gallery is immaterial, as is the fact that the organization may devote the net sale proceeds to its avowed mission.

TAL has admirable intent, but regardless of its intent and focuses, the exemption statutes are quite clear of the requirements and TAL has not met the statutory requirements.

Order

It is, therefore, ORDERED that the initial determination of the State Board's Designee is affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§4-5-301—325, Tenn. Code Ann. §67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

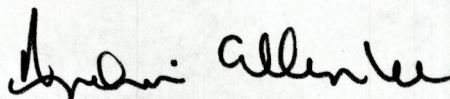
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the

State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th, July 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Joseph W. Gibbs, Attorney, Boulton, Cummings, Conners, Berry, PLC
Nicole Stanley, Director, Tennessee Art League
Metropolitan Attorney Margaret O. Darby
John Cantrell, Exemption Administrator, Davidson County Assessor's Office

TAL.DOC